



EXCESS MAINTENANCE AGREEMENT

Center Township
224 Center Grange Road
Aliquippa, Pennsylvania 15001

Excess Maintenance Agreement No. _____

MADE AND ENTERED into this _____ day of _____, 20____ by,
and between:

CENTER TOWNSHIP, a municipal subdivision in the Commonwealth of Pennsylvania,
Situate in Beaver County, Pennsylvania, and hereinafter referred to as “Township,” and

Company: _____

Address: _____

Telephone No.: _____

Name: _____

Title: _____

DEFINITIONS:

USER: means that user who signs and executes this Agreement.

TOWNSHIP: means Center Township acting through their Municipal Officials.

APPURTENANCE: means the property lying within the right-of-way of a highway, together with any improvements placed within this right-of-way, including, but not limited to, the roadway, berm, culverts, under drains, stormwater pipes, ditches and related drainage facilities.

BRIDGE: means any structure including supports, erected over a depression or an obstruction, such as, but not limited to, water, highway, or railway and having a track or passageway for carrying traffic or other moving loads and having an opening measured along the center of the roadway for more than 8 feet between supports.

HIGHWAY: means any highway or bridge in the Township’s system of highways and bridges, including the entire width between right-of-way lines, over which the Township has assumed, or has been legislatively given, jurisdiction.

EXCESS MAINTENANCE: means maintenance or restoration or both (but not betterment) of a posted highway and appurtenances (in excess of normal maintenance) caused by use of over-posted-weight vehicles.

NORMAL MAINTENANCE: means the usual and typical activities necessary to maintain the roadway, shoulders, drainage facilities, and other appurtenances in the state of repair existing at the date of the inspection.

OVER-POSTED-WEIGHT VEHICLE: means a vehicle, including tractor and trailer or other combinations, that has a gross weight greater than the posted weight limit.

TYPE 1 PERMIT: A Type 1 permit is valid only when carried in the over-posted-weight vehicle. A Type 1 Permit is for long-term use, when significant damage occurs.

TYPE 2 PERMIT: A Type 2 permit is valid only when conspicuously displayed in the USER'S place of business.

TYPE 3 PERMIT: A Type 3 permit is valid only when carried in the over-posted-weight vehicle. A Type 3 Permit is typically for short-term use, when minimal damage is expected.

BACKGROUND:

The USER in the conduct of its business makes use of portions of Township highways which are under jurisdiction, maintenance, and control of the Township.

Pursuant to the provision of Section 4902 of the Vehicle Code Act of June 17, 1976, P. L. 162, as amended, 75 PaCS 4902, the Township has posted gross weight restrictions on portions of the Township highways.

The USER wishes to move OVER-POSTED-WEIGH VEHICLE(S) together with loads, in excess of the posted gross weight restrictions over and across portions of those posted Township highways.

The Township, pursuant to 67 Pa. Code, Chapter 198, is willing to permit the movement of the USER'S vehicles or combinations, together with loads, in excess of the posted gross weight restriction, conditioned upon the execution of an approved form of security by the USER in favor of the Township to cover the cost of excess maintenance and restoration necessitated by the movement in accordance with the terms, conditions, and provisions hereinafter contained in this Agreement.

For and in consideration of the mutual promises hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree for themselves and their successors and assigns as follows:

AGREEMENT:

Permission to Move Vehicles

1. The Township will permit USER to move vehicles or combinations, together with loads, in excess of the posted gross weight restriction on the portion(s) of Township highways indicated below, subject to all provisions of the Vehicle Code Act of June 17, 1976 P. L. 162, as amended (75 PaCS) and Pa Code, Chapter 189.

The Township has issued the USER a Type ____ permit to exceed the posted gross weight restriction on the portion of Township highways identified below, located in Center Township, Beaver County, Pennsylvania:

TOWNSHIP HIGHWAY	FROM	TO
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Joint Use

2. In the event that more than one USER makes use of the portion(s) of Township highway(s) described in Paragraph 1 above, the USER shall report to the Township the amount of tonnage and / or trips. The Township may assess and proportion, at its discretion, the maintenance and / or restoration costs among USERS on a periodic basis or upon termination of this Agreement.

Responsibility of USER

3. The identified portion(s) of Township highway(s) and appurtenances shall be maintained by the USER at all times to a level consistent with the attached cross-section and these portion(s) of Township highway(s) and appurtenances shall be restored by the USER to a level consistent with the attached cross-section. A copy of the cross section(s) shall be attached to this Agreement as a Schedule and made a part hereof.

The USER'S responsibility shall only extend to excess maintenance and / or restoration. The non-performance of normal maintenance by the Township shall under no circumstances constitute grounds for an offset or credit against any excess maintenance and / or restoration responsibilities of the USER.

If the USER selects Paragraph 6, Option B below, the Township shall determine, in its discretion, whether the excess maintenance and / or restoration are satisfactory.

On-Site Inspection

4. The USER and the Township agree that, in order to determine the condition of the identified portion(s) of the Township highway(s) and appurtenances, an on-site field inspection shall be made jointly by the Township and the USER. A memorandum shall be prepared describing the condition of the identified portion(s) of the Township highway(s) and appurtenances together with the nature and extent of any repairs needed to correct any existing damage for which the USER will not be liable. Photographs may also be taken. The memorandum and the photographs, if taken, shall be incorporated as an Exhibit as part of this Agreement. The USER shall pay all costs of this inspection.

Maintenance Not Covered

5. The USER shall have no obligation for maintenance to remedy damage directly resulting from acts of God or war or for routine removal of snow and ice.

Performance of Excess Maintenance and / or Restoration

6. Excess maintenance and / or restoration shall be performed in accordance with Option ____ below.

OPTION A

The Township's maintenance forces and / or contractor(s) selected by the Township through its prescribed procedures. The excess maintenance and / or restoration shall be performed to a level consistent with that agreed to in Paragraph 3 above. The work shall be in conformance with Township Specifications and shall be supervised and inspected by Township personnel.

The Township may invoice the USER for the estimated cost of repairs using either the latest maintenance contract prices or the Township's latest average monthly maintenance unit prices. These estimated costs shall be computed for all damages noted on the on-site inspection form. The USER agrees to reimburse the Township for all estimated costs.

The USER shall submit payment to the Township within 30 days from the date of invoice. If the USER fails to make the payment, the Township may in its discretion:

- a. Rescind the USER'S permission to move vehicles or combination together with loads, in excess of posted weight restriction over and across any Township highway(s) until payment is made.

- b. Terminate this Agreement.
- c. Proceed against security provided pursuant to Paragraphs 7 and 13 below.
- d. Any or all of the above.

OPTION B

The USER and / or its contractor(s). The excess maintenance and / or restoration shall be performed to a level consistent with that agreed to in Paragraph 3 above. The work shall be in conformance with Township Specifications. If USER does work, he should notify the Township three (3) days in advance of doing the work. Any excess maintenance and / or restoration associated with bridges shall be specifically developed in a memorandum by the Township and directed to the USER for completion. The Township reserves the right to monitor or direct any excess maintenance and / or restoration. The USER shall reimburse the Township for any expenses so incurred by the Township.

1. Provide proper traffic protection at all times during excess maintenance and / or restoration. This protection shall comply with Township work area traffic control requirements as contained in Pennsylvania Department of Transportation (PennDOT) Specification Publication 408 and supplements thereto and PennDOT Publication 203.
2. Indemnify, save harmless, and defend (if requested) the Township and its officers, agents, and employees, from all suits, actions or claims of any character, name, or description brought for on account of injuries, death, or damages received or sustained by any person, persons, or property during the performance of the work on portion(s) of Township highway(s) and appurtenances to be repaired, by or for the USER or its officers, agents, employees, contractors, or representatives, whether the same be due to the use of defective materials, defective workmanship, neglect in safeguarding the work on or by or on account of any act, omission, neglect or misconduct of the USER or its officers, agents, employees, contractors, or representatives, during the performance of the work.
3. Provide evidence to the Township of public liability insurance for bodily injury and property damages in the minimum amounts of \$1,000,000 each occurrence. The insurance policy shall cover any loss that might occur during the performance of any excess maintenance and / or restoration by the USER, or its officers, agents, employees, contractors, or representatives. The Township shall be named as an additional insured on the certificate of insurance. A copy of the certificate of insurance shall be attached to this Agreement as an Exhibit. This insurance shall neither be changed nor cancelled without forty-five (45) days advance written notice of such change or cancellation. This advance written notice of change or

cancellation shall be forwarded to Center Township located at 224 Center Grange Road, Aliquippa, Pennsylvania 15001.

4. Promptly perform excess maintenance and / or restoration as needed. If the Township determines that the USER is not maintaining and / or restoring the portion(s) of Municipal highway(s) and appurtenances to the level agreed to in Paragraph 3 above, the Township will notify the USER in writing of this determination and the USER shall promptly perform the required excess maintenance and / or restoration.
5. If the USER fails to perform the excess maintenance and / or restoration promptly after receipt of notice, the Township may, in its discretion:
 - a. Rescind the USER’S permission to perform excess maintenance and / or restoration, and to move vehicles or combinations, together with loads, in excess of the posted weight restriction over and across and Township highway(s) until necessary excess maintenance and / or restoration are satisfactorily performed or costs thereof are paid.
 - b. Maintain and / or restore the portion(s) of Township highway(s) and appurtenances with the USER reimbursing the Township for all costs so incurred.
 - c. Proceed against security provided pursuant to Paragraphs 7 and 13 below.
 - d. Terminate this Agreement.
 - e. Any or all of the above.

Security

7. To secure the performance of the USER’S obligations, the USER shall execute and deliver to the Township the following type(s) of security in the amounts as indicated:

A.	Irrevocable Letter of Credit	\$ _____
B.	Certified Check	\$ _____
C.	Cashier’s Check	\$ _____
D.	Bank Account	\$ _____
E.	Certificate of Deposit (Cash Value)	\$ _____
F.	Security Agreement	\$ _____
G.	Escrow Agreement	\$ _____
H.	Performance Bond	\$ _____
I.	Other	\$ _____

Security option(s) _____ in the total amount of \$ _____ has (have) been agreed to.

This Agreement, together with the type(s) of security provided, may be filed in the appropriate prothonotary's office or other registry in a manner and at such time and frequent as the Township deems proper. The USER shall pay costs of such filings.

A copy of the security(ies) shall be attached to this Agreement as Exhibit(s).

Liability of USER

8. The USER shall be liable for all costs and excess maintenance and / or restoration and all other expenses incurred pursuant to this Agreement. The USER'S liability shall not be limited to the total amount of security shown in Paragraph 7 above.

The security shown in Paragraph 7 above is not to be interpreted as a limit of cost and / or liability relative to damages to Township roadways and related appurtenances. It is understood that any and all damages to Township roadways caused by the USER shall be repaired by the USER to the satisfaction of Center Township and at no cost to Center Township.

Termination

9. The USER and the Township retain the right to terminate their future obligations under this Agreement at any time by submitting a written notice of intent to terminate. As soon as possible after receipt of such notice, the Township and the USER'S representatives shall inspect the Township highways(s) and appurtenances. The Township highways(s) and appurtenances if Paragraph 6 Option B was selected, shall be restored to a level consistent with that agreed to in Paragraph 3 above. Restoration shall be performed by the party(ies) agreed to in Paragraph 6 above. Upon completion of the improvements to the Townships satisfaction this Agreement shall be terminated and of no further force or effect and all security delivered to the Township by the USER shall be released.

Revocation of Permit

10. The Township may revoke the USER'S permit and may pursue whatever legal remedies it deems proper, if it determines, at its discretion, that the USER is not in compliance with any provision of this Agreement. In the event the USER has concluded its operations on any or all portions of the highway covered by this Agreement, and has failed to complete improvements to the Township's satisfaction, the Township may, at its discretion, revoke the USER'S permit(s) to operate on any other highway(s) under any other similar Agreement.

Closing of Municipal Highways

11. This Agreement shall not prohibit the Township from closing a highway or bridge to any vehicle combination in excess of a specific weight if such closing is authorized by law and is necessary for safety, or is a temporary closing due to climatic conditions or an act of God or war.

Effective Date

12. The effective date of this Agreement shall be the date upon which the on-site inspection memorandum is signed by the USER and the Township. The effective period of this Agreement shall continue from its effective date until the date of its termination as provided for herein.

Additional Security and Termination

13. In addition to the Township’s right of termination as set for the above, the Township shall have the right to require additional security at such time as the Township determines, in its discretion, that the aggregate amount of damage to the Municipal highway(s) exceeds 75% of the face amount of the security furnished. If additional security is required, it shall be retained by the Township until all excess maintenance and / or restorations have been completed. Failure to provide such additional security as is required shall constitute a breach of this Agreement.

Attest:

Center Township:

By: _____

Title: _____

Title: _____

(SEAL)

Attest:

USER

By: _____

Title: _____

Title: _____

(SEAL)

Date: _____

Date: _____